

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's Rules)	CC Docket No. 94-102
To Ensure Compatibility with)	
Enhanced 911 Emergency)	
Calling Systems)	
)	

COMMENTS OF AT&T WIRELESS SERVICES, INC.

AT&T Wireless Services, Inc. ("AWS") hereby submits its comments in support of the petitions for reconsideration of the *Order on Reconsideration* in the Richardson proceeding^{1/} filed by Cingular Wireless LLC,^{2/} T-Mobile USA, Inc.,^{3/} and Nextel Communications Inc.^{4/} AWS agrees with Cingular, T-Mobile, and Nextel that the procedural rules adopted by the Commission in *Richardson II* have added unnecessary complexity to the E911 deployment process and will frustrate, not advance, the Commission's objectives. In addition, the framework adopted by the Commission denies carriers the right to request documentation of PSAP readiness

^{1/} *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas*, CC Docket No. 94-102, *Order on Reconsideration*, 17 FCC Rcd 24282 (rel. Nov. 26, 2002) ("*Richardson II*").

^{2/} *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas*, CC Docket No. 94-102, Cingular Petition for Reconsideration filed February 21, 2003 ("Cingular petition").

^{3/} *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas*, CC Docket No. 94-102, T-Mobile Petition for Clarification and Reconsideration filed February 21, 2003 ("T-Mobile petition").

^{4/} *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas*, CC Docket No. 94-102, Nextel Petition for Reconsideration filed February 21, 2003 ("Nextel petition").

and does not provide the flexibility needed to adapt to PSAP integration challenges occurring near the end of the required deployment period.

DISCUSSION

I. The *Richardson II* Process Impedes the Deployment of E911 Services

The Commission's rules currently provide that a PSAP's request for E911 service is not valid unless the PSAP "is capable of receiving and utilizing the data elements associated with the service" and "a mechanism for recovering the [PSAP's] costs of the enhanced 911 service is in place."^{5/} As the petitioners explain, the Commission's objective when it adopted this requirement was to allow carriers "to avoid[] unnecessary expenditures or investments in their networks,"^{6/} and speed deployment of E911 services by focusing their deployment efforts on PSAPs that were truly ready to begin receiving service. The *Richardson II* process, however, defeats the very purpose of the rule by severely impeding the ability of wireless carriers to prioritize deployments effectively.^{7/}

Under the complex two-step "tolling" process adopted in *Richardson II*, if a carrier does not challenge the validity of a PSAP request within the first fifteen days after it is received, the carrier has no other opportunity to halt the deployment process until it has completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness. Even if

^{5/} 47 C.F.R. § 20.18(j).

^{6/} Cingular petition at 2 (citing *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Second Memorandum Opinion and Order*, 14 FCC Rcd 20850, 20909 (1999) (supplemental final regulatory flexibility analysis), *recon. denied*, 15 FCC Rcd 22810 (2000), *affirmed sub nom.*, *United States Cellular Corp. v FCC*, 2001 U.S. App. Lexis 15395 (D.C. Cir. June 29, 2001)).

^{7/} See Cingular petition at 4. See also T-Mobile at 18 ("in the guise of 'procedural guidelines for requesting documentation predictive of readiness,' the changes substantially limit a carrier's ability to respond efficiently (by redirecting resources) when it believes, in good faith, that a PSAP has not made a 'valid request.'")

it becomes clear during the deployment process that a PSAP will not be capable of utilizing the E911 information, the carrier must complete its deployment efforts at that PSAP. Only when that deployment process is complete can the carrier certify to the Commission that the PSAP is not ready and, assuming it has provided the PSAP with 21-days notice and the PSAP has not objected, have its six-month compliance obligation “temporarily tolled.”^{8/}

As Cingular explains, this process requires carriers to divert time and resources to fulfilling the requests of PSAPs that in the end are not capable of utilizing the information, while PSAPs that are capable are forced to wait.^{9/} For example, during just a single month, November 2002, AWS deployed its Phase II equipment at approximately 280 cell sites, but then discovered during the testing process that the 22 PSAPs associated with those sites had not yet upgraded their CPE to accommodate Phase II information. Integration of Phase II E911 service at those locations was delayed pending completion of the PSAPs’ CPE upgrades.

As Cingular argues, the cumbersome *Richardson II* certification process is unnecessary because the Commission already has determined that it will not hold carriers liable for failing to provide service if the PSAP is not ready to receive and utilize the Phase II data.^{10/} AWS therefore agrees with Cingular that the Commission should eliminate the certification process and simply allow carriers to stop deploying E911 service to any PSAP if they have a good faith belief that the PSAP will not be ready at the end of the six-month period.^{11/} Because the Commission will still have the authority to find carriers non-compliant if it turns out that the PSAP was in fact ready, carriers will not make the decision to stop deployment lightly. They

^{8/} *Richardson II* at ¶ 15.

^{9/} Cingular petition at 15.

^{10/} *Id.* at 17 (citing *Richardson II* at ¶ 14).

^{11/} *Id.*

will, however, have the flexibility they need to shift their resources to PSAPs that are ready, which will speed the deployment of E911 services to the public.

II. The *Richardson II* Process Denies Carriers the Right to Request Documentation of PSAP Readiness

The *Richardson II* process also essentially forecloses a carrier from tolling the deployment period by requesting documentation about a PSAP's readiness unless it does so within the first fifteen days after it receives the request, despite the Commission's previous findings that carriers are entitled to such documentation or a request is invalid. Notwithstanding the Commission's statement that a carrier "is free to request readiness documentation from a PSAP more than 15 days after receipt of the PSAP's E911 service request,"^{12/} there is no point in making such a request if the carrier cannot toll its deployment obligation in the event a PSAP does not respond.^{13/}

As T-Mobile argues, "[t]here is no need to cut off the carrier's ability to request the documentation to which it is entitled."^{14/} If a PSAP cannot provide the required documentation on day 16, then the request is just as invalid as if it could not provide the required documentation on day 14. AWS therefore supports T-Mobile's alternative documentation request timeline: documentation could be requested at any point during the process, and "[t]olling would not be granted retroactively to day 1, but only for the period beyond 15 days taken by the PSAP to produce the required documentation of preparedness."^{15/}

^{12/} *Richardson II* at ¶ 10.

^{13/} As T-Mobile notes, if a carrier cannot "receive tolling under the rule, the carrier's only resort would be to seek certification at the end of the six-month period," but certification is only available if the carrier has completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness. T-Mobile petition at 19, n. 39.

^{14/} *Id.* at 19.

^{15/} *Id.*

III. The *Richardson II* Process Is Unnecessarily Adversarial

AWS also agrees with Nextel that the process required by *Richardson II* is unnecessarily adversarial.^{16/} AWS has not, in the past, routinely used PSAP readiness as a basis for asserting that requests for E911 service are invalid.^{17/} As described above, however, under the two-step tolling process adopted in *Richardson II*, if a carrier does not challenge the validity of a PSAP request within the first fifteen days after it is received, the carrier cannot halt the E911 implementation process until it has completed its portion of the deployment. The *Richardson II* process therefore encourages carriers routinely to challenge the validity of PSAP requests immediately upon receipt in order to attempt to limit their liability and preserve their resources. Such challenges, while explicitly permitted under *Richardson II*, will inevitably lead to confusion and possible misinterpretation by PSAPs, which in turn may jeopardize the mutually-agreeable deployment schedules previously noted with favor by the Commission.^{18/} To avoid the potential for such misunderstandings, the Commission should eliminate the need for carriers routinely to challenge the validity of PSAP requests by adopting T-Mobile's alternative documentation request timeline described above.

The 21-day notice requirement likewise forces carriers to take an adversarial position during the deployment process. AWS has found most PSAPs are open to negotiating agreements to extend deployment deadlines, but the 21-day requirement forces carriers to issue counter-productive and potentially confusing certification notices while such negotiations are ongoing in

^{16/} Nextel petition at 3.

^{17/} As Nextel explains, the complexities of the deployment process mean that PSAP requests are not easily classified into valid and invalid categories established by FCC. For example, both sides may be ready, but their solutions may not work together and Phase II cannot be deployed. *Id.* at 9.

^{18/} See *Richardson II* at ¶ 29.

order to preserve their rights to toll their deployment obligations at the end of the six month period.^{19/} Moreover, most carriers and PSAPs need the full six month period to complete their deployment obligations. Under *Richardson II*, however, a carrier must inform every PSAP that it even remotely suspects may not be ready at the end of the six month period that the carrier doubts the PSAP's readiness, while at the same time asserting that the carrier itself expects to be ready, even though either factual situation could easily change during the next 21 days. Not only is such notice meaningless, but AWS has found these notices to be detrimental to amicable negotiations and confusing to the PSAPs that receive them. Moreover, as T-Mobile argues, there is no reason to require carriers to provide such notice if PSAPs can challenge the carrier's certification after it is filed.^{20/} The Commission should therefore eliminate the 21-day notice requirement.

IV. The *Richardson II* Process Does Not Adequately Protect Carriers

While purportedly seeking to ensure that wireless carriers are not liable if they are unable to provide service at the end of the six month period because the PSAP is not ready, the current process still leaves wireless carriers exposed to liability in situations that are beyond their control. For example, there may be a situation where both the wireless carrier and the PSAP believe that the PSAP is capable of receiving and utilizing Phase II information. The carrier therefore deploys its Phase II equipment and proceeds towards Phase II service integration with the PSAP. Twelve days prior to the applicable deployment deadline, however, testing between the PSAP and the wireless carrier reveals that the PSAP customer premises equipment is in fact incapable of receiving Phase II information and must be replaced. Given that this discovery

^{19/} See Cingular petition at 16.

^{20/} T-Mobile petition at 15.

occurred after the 21-day notification window created by *Richardson II*, it is unclear whether or not the wireless carrier could obtain the tolling relief that would have been available if the equipment issue had been discovered 30 days prior to the regulatory deadline.

Moreover, as T-Mobile explains, the current certification process fails to address the situation in which a PSAP's inability to receive and utilize E911 data has delayed implementation, but the PSAP is nonetheless able to receive and utilize such data on day 180.^{21/} Under a strict reading of *Richardson II*, the carrier would not be able to file a certification regarding the PSAP's readiness in this situation, but the carrier nevertheless would not be in compliance with the E911 rules unless it could complete integration and testing within 10 days. To address this situation, AWS agrees with T-Mobile that the Commission should clarify that, even if a PSAP is ready on day 180, if fewer than 90 of the 180 days remained when the PSAP notified the carrier that it was ready, the carrier has until the 90th day after notice to complete integration.^{22/}

AWS also agrees with T-Mobile that the FCC should make it clear that carriers can serve the requesting public safety entity with the 21-day notice and certification, which may or may not be the "affected PSAP."^{23/} AWS receives E911 service requests from various governmental entities. While some requesting entities are a single PSAP, others, such as the State of New Jersey, represent one hundred or more PSAPs. Serving each PSAP in this situation would be incredibly burdensome.

^{21/} *Id.* at 9. In T-Mobile's example, if a PSAP "becomes ready to receive and utilize E911 data on day 170, the rules require the wireless carrier to complete the deployment within approximately ten days of the PSAP becoming ready (day 180)." *Id.* at 10.

^{22/} *Id.* at 11.

^{23/} *Id.* at 14.

The Commission could also speed the deployment of E911 services by requiring that PSAP requests comply with the Commission's service requirements or provide other guidance regarding where to send such requests. In *Richardson II*, the Commission required a carrier's request for readiness documentation and a PSAP's response to the same to be served in accordance with section 1.47 of the Commission's rules.^{24/} AWS is concerned that PSAP requests are being sent to AWS' retail stores or other locations where they may not be properly logged in to AWS' system for tracking PSAP requests. While AWS has taken reasonable steps to ensure that all AWS personnel are aware of the importance of E911 requests and are familiar with where to route such requests, the process would be much more efficient if all requests were sent to the contact and address designated by AWS on the Association of Public-Safety Communications Officials' (APCO's) website.^{25/} The Commission also should clarify that a carrier would not be liable for failing to provide service in response to a PSAP request that was not sent to the contact and address designated by the carrier.

Finally, the Commission's current certification process essentially requires AWS to prove that a PSAP is not ready to utilize E911 data or face liability for non-compliance, even though it is the PSAP that has the information about its own readiness. AWS therefore agrees with Nextel that the Commission should not impose personal liability on a corporate certifying officer or director. As Nextel explains, "the deployment process often is complicated and complex and is subject to various factors that often can be difficult, if not impossible, to verify without cooperation from a number of other involved stakeholders."^{26/} Certifying regarding the status of the deployment process requires an officer or director to make representations about the actions

^{24/} See *Richardson II* at n.14.

^{25/} See <<http://www.apcointl.org/about/gov/wireless.html>>.

of third parties over which he or she has no control or first hand knowledge. While the Commission may believe that carriers are the most convenient source of information about the deployment process, an officer or director should not be personally liable if that information turns out to be incorrect or incomplete. Moreover, personal liability is unnecessary given the carriers' existing liability as a licensee.

CONCLUSION

For the reasons set forth above, the Commission should grant the petitions for reconsideration filed by Cingular, T-Mobile, and Nextel.

Respectfully submitted,

AT&T WIRELESS SERVICES, INC.

Howard J. Symons
Michelle M. Mundt
Bryan T. Bookhard
Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Of Counsel

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/s/ Douglas I. Brandon
Douglas I. Brandon
Vice President - External Affairs
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 223-9222

^{26/} Nextel petition at 11.

CERTIFICATE OF SERVICE

I, Michelle Mundt, hereby certify that on the 24th day of March, I caused copies of the foregoing "Comments of AT&T Wireless Services, Inc." to be sent to the following by either first class mail, postage pre-paid, or by hand delivery, by messenger(*) to the following:

Jennifer Salhus*
Policy Division
Wireless Telecommunications Bureau
445 12th Street, S.W.
Washington, D.C. 20054

Qualex International*
Federal Communications Commission
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554

J. R. Carbonell
Carol L. Tacker
David G. Richards
Counsel to Cingular Wireless LLC
5565 Glenridge Connector
Suite 1700
Atlanta, GA 30342

Robert S. Foosaner
Lawrence R. Krevor
Laura L. Holloway
James Paull IV
Counsel to Nextel Communications, Inc.
2001 Edmund Halley Drive
Reston, VA 20191-3436

Jim Nixon
Robert A. Calaff
T-Mobile USA, Inc.
401 9th Street, N.W.
Suite 550
Washington, D.C. 20004

John T. Nakahata
Karen L. Gulick
Counsel to T-Mobile USA, Inc.
Harris, Wiltshire & Grannis, LLP
1200 18th Street, N.W.
Suite 1200
Washington, D.C. 20036

/s/ Michelle Mundt

Michelle Mundt